

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

ANTHONY ROSS BLACK,

Petitioner,

vs.

E.K. McDANIEL, *et al.*,

Respondents.

3:05-cv-0316-HDM-VPC

**ORDER**

This action is a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 by pro se petitioner Anthony Black. On June 23, 2008, this Court denied the petition for writ of habeas corpus and determined petitioner was not entitled to a certificate of appealability (docket #37). The Clerk entered judgment the following day (docket #38). Petitioner then filed a motion to alter or amend the judgment (docket #47) and a motion for appointment of counsel (docket #46). This Court denied those motions (docket #52).

Now before the Court is petitioner's motion for certificate of appealability (docket #56) and motion for appointment of counsel (docket #57). This Court has previously denied petitioner a certificate of appealability, and the Ninth Circuit Court of Appeals also denied a certificate of appealability (docket #50).

In order to proceed with an appeal from this court, petitioner must receive a certificate of appealability. 28 U.S.C. § 2253(c)(1). Generally, a petitioner must make "a substantial showing

1 of the denial of a constitutional right” to warrant a certificate of appealability. *Id.* The Supreme  
2 Court has held that a petitioner “must demonstrate that reasonable jurists would find the district  
3 court’s assessment of the constitutional claims debatable or wrong.” *Slack v. McDaniel*, 529 U.S.  
4 473, 484 (2000).

5 The Supreme Court further illuminated the standard for issuance of a certificate of  
6 appealability in *Miller-El v. Cockrell*, 537 U.S. 322 (2003). The Court stated in that case:

7 We do not require petitioner to prove, before the issuance of a COA, that  
8 some jurists would grant the petition for habeas corpus. Indeed, a claim  
9 can be debatable even though every jurist of reason might agree, after the  
10 COA has been granted and the case has received full consideration, that  
11 petitioner will not prevail. As we stated in *Slack*, “[w]here a district court  
has rejected the constitutional claims on the merits, the showing required  
to satisfy § 2253(c) is straightforward: The petitioner must demonstrate  
that reasonable jurists would find the district court’s assessment of the  
constitutional claims debatable or wrong.”

12 *Id.* at 1040 (quoting *Slack*, 529 U.S. at 484).

13 The court has considered the issues raised by petitioner, with respect to whether they  
14 satisfy the standard for issuance of a certificate of appeal, and the court determines that none meet  
15 that standard. Petitioner has not shown that reasonable jurists would find this Court’s assessment of  
16 petitioner’s constitutional claims debatable or wrong. The Court will deny the motion for certificate  
17 of appealability. Moreover, the Court will deny the motion for appointment of counsel. This Court  
18 has previously denied petitioner’s motions for appointment of counsel, and petitioner has not shown  
19 any change in circumstances at this time.

20 **IT IS THEREFORE ORDERED** that the motion for certificate of appealability  
21 (docket #56) is **DENIED**.

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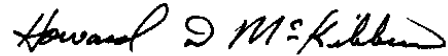
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1                   **IT IS FURTHER ORDERED** that the motion for appointment of counsel (docket  
2 #57) is **DENIED**.

3                   Dated this 28<sup>th</sup> day of September, 2009.

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7 UNITED STATES DISTRICT JUDGE  
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